

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WARREN HERCULES,

Plaintiff,

COMPLAINT

-against-

JURY TRIAL DEMANDED

JP MORGAN CHASE BANK, NA,

Defendant.
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Plaintiff, WARREN HERCULES, by and through his attorneys, **THE LAW OFFICE OF SCOTT G. CERBIN, ESQ., PLLC**, complaining of the defendants herein, respectfully shows the Court and alleges:

PRELIMINARY STATEMENT

1. This is a consumer protection action in which the plaintiff seeks relief for the defendant's violation of his rights secured by the Electronic Funds Transfer Act, 15 U.S.C. §1601. The plaintiff seeks treble damages, an award of costs and attorney's fees, and such other and further relief as this court deems just and equitable.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked under 28 U.S.C. §1331 and 15 U.S.C. §1601.

3. The plaintiff further invokes this court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over any and all state law claims and as against all parties that are so related to claims in this action within the original jurisdiction of this court that they form part of the same case or controversy.

4. Venue herein is proper for the United States District Court for the Eastern District of New York under 28 U.S.C. § 1391 (a), (b) and (c).

PARTIES

5. During all times mentioned in this complaint Plaintiff WARREN HERCULES was and still is a citizen of the United States residing in Canada.

6. During all times mentioned in this complaint, Defendant JP MORGAN CHASE, NA, ("CHASE") was and still is a financial institution duly chartered and existing by virtue of the laws of the United States, with its principal headquarters located in the state, city, and county of New York.

STATEMENT OF FACTS

7. Plaintiff WARREN HERCULES has banked with defendant CHASE and its predecessors for approximately 20 years. On or about April 15, 2013 plaintiff, in furtherance of a real property investment, tendered a check against his account with defendant. The check was not honored due to insufficient funds. Mr. Hercules immediately realized something was amiss and he promptly contacted defendant. Plaintiff thereafter learned that on or about November 2012 defendant issued an unauthorized debit card to an unknown individual. Plaintiff further learned that from November 2012 through April 15, 2013, this unknown individual made numerous Automated Teller Machine ("ATM") withdrawals totaling approximately \$26,000.00 (Twenty Six Thousand Dollars) at various locations within the County of Kings. The transactions were often made on successive days and generally in amounts of several

hundred dollars as per ATM limits. In the twenty years plaintiff has owned this account he has never used a debit card and never made a series of successive cash withdrawals. As such, defendant new or should have known that these numerous successive transactions were fraudulent.

FIRST CAUSE OF ACTION
(Improper Issuance and Validation of
Cards pursuant to 15 U.S.C. 1693[i])

8. Plaintiff repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

9. By its conduct and actions in improperly issuing to, and validating a debit card for, an unauthorized individual defendant violated plaintiff's statutory rights.

10. As a result of the foregoing, plaintiff was deprived of his property, suffered great humiliation, costs and expenses, and was otherwise damaged and injured.

SECOND CAUSE OF ACTION
(Civil Liability of Defendant
Pursuant to 15 U.S.C. 1693[m])

11. Plaintiff repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

12. By its failure to comply with the provisions of this section defendant has violated plaintiff's statutory rights.

13. As a result of the foregoing, plaintiff was deprived of his property, suffered great humiliation, costs and expenses, and was otherwise damaged and injured.

THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

14. Plaintiff repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

15. By its failure to adequately safeguard plaintiff's funds on deposit, defendant has violated right's rights as established by the laws of the State of New York.

16. As a result of the foregoing, plaintiff was deprived of his property, suffered great humiliation, costs and expenses, and was otherwise damaged and injured.

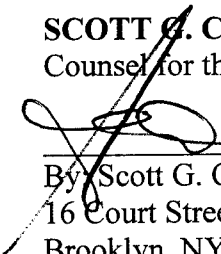
WHEREFORE, plaintiff demands the following relief jointly and severally against all of the defendants:

- a. Treble damages;
- b. The convening and empaneling of a jury to consider the merits of the claims herein;
- c. Costs, interest, and attorneys' fees;
- d. Such other further relief as this court may deem appropriate.

Dated: Brooklyn, New York
January 13, 2014

Respectfully submitted,

SCOTT G. CERBIN, ESQ., PLLC
Counsel for the Plaintiff


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